

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

US BANK NATIONAL ASSOCIATION, AS )  
TRUSTEE FOR MERRILL LYNCH )  
MORTGAGE INVESTORS TRUST, )  
MORTGAGE LOAN ASSET BACK )  
CERTIFICATES SERIES 2005-A8, )

Case No.: 2:16-cv-00866-GMN-PAL

**ORDER**

Plaintiff,

vs.

BDJ INVESTMENTS, LLC, *et al.*,

Defendants.

Pending before the Court is the Motion to Dismiss, (ECF No. 57), filed by Defendant Lone Mountain Quartette Community Association (“HOA”). Plaintiff US Bank National Association (“Plaintiff”) filed a Response, (ECF No. 60), and HOA filed a Reply, (ECF No. 61). For the reasons discussed herein, HOA’s Motion to Dismiss is **GRANTED**.<sup>1</sup>

**I. BACKGROUND**

This case arises from the non-judicial foreclosure on real property located at 10625 Colter Bay Court, Las Vegas, Nevada 89129 (the “Property”). (*See* Compl. ¶ 14, ECF No. 1). On May 31, 2005, Isam Halteh (“Borrower”) purchased the Property by way of a loan in the amount of \$255,400.00 secured by a deed of trust (the “DOT”), identifying Mortgage Electronic Registration Systems (“MERS”) as beneficiary. (*Id.* ¶¶ 14–15). Plaintiff later obtained an interest in the Property and is the current holder of the DOT. (*Id.* ¶¶ 7, 26).

Upon Borrower’s failure to pay all amounts due, HOA placed lien notices on the Property. (*Id.* ¶ 16). HOA subsequently recorded a foreclosure deed and held a foreclosure sale

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<sup>1</sup> Also before the Court is BDJ Investments, LLC’s (“BDJ”) Motion to Stay, (ECF No. 70), which is hereby **DENIED as moot** in light of the Nevada Supreme Court’s ruling in *SFR Invs. Pool 1, LLC v. Bank of New York Mellon*, 422 P.3d 1248 (Nev. 2018).

1 on April 17, 2012. (*Id.* ¶ 17). At the foreclosure sale, BDJ Investments, LLC (“BDJ”) acquired  
2 the Property for \$6,000.00. (*Id.*).

3 Plaintiff filed its Complaint on April 15, 2016, bringing the following causes of action  
4 arising from the foreclosure and subsequent sale of the Property: (1) declaratory relief under 28  
5 U.S.C. § 2201 and the United States Constitution; (2) quiet title; (3) declaratory relief; and (4)  
6 violation of NRS 112.190. (*Id.* ¶¶ 30–72).

## 7 **II. LEGAL STANDARD**

8 Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon  
9 which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
10 555 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on  
11 which it rests, and although a court must take all factual allegations as true, legal conclusions  
12 couched as a factual allegations are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, Rule  
13 12(b)(6) requires “more than labels and conclusions, and a formulaic recitation of the elements  
14 of a cause of action will not do.” *Id.* “To survive a motion to dismiss, a complaint must contain  
15 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
16 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A  
17 claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
18 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This  
19 standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

20 “Generally, a district court may not consider any material beyond the pleadings in ruling  
21 on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,  
22 1555 n.19 (9th Cir. 1990). “However, material which is properly submitted as part of the  
23 complaint may be considered.” *Id.* Similarly, “documents whose contents are alleged in a  
24 complaint and whose authenticity no party questions, but which are not physically attached to  
25 the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without  
converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14

1 F.3d 449, 454 (9th Cir. 1994). On a motion to dismiss, a court may also take judicial notice of  
2 “matters of public record.” *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).  
3 Otherwise, if a court considers materials outside of the pleadings, the motion to dismiss is  
4 converted into a motion for summary judgment. Fed. R. Civ. P. 12(d).

5 If the court grants a motion to dismiss for failure to state a claim, leave to amend should  
6 be granted unless it is clear that the deficiencies of the complaint cannot be cured by  
7 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant  
8 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in  
9 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the  
10 movant, repeated failure to cure deficiencies by amendments previously allowed, undue  
11 prejudice to the opposing party by virtue of allowance of the amendment, futility of the  
12 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

### 13 **III. DISCUSSION**

14 HOA moves to dismiss Plaintiff’s Complaint on the following grounds: (1) the  
15 applicable statute of limitations bars Plaintiff’s claims; (2) Plaintiff’s constitutional claims are  
16 not cognizable causes of action; (3) HOA has disclaimed interest in the Property such that  
17 Plaintiff cannot assert a quiet title claim against it; (4) the foreclosure sale was not  
18 commercially unreasonable as a matter of law; (5) Plaintiff’s claim under NRS 112.190 fails to  
19 state a claim upon which relief may be granted. (*See generally* HOA’s Mot. to Dismiss  
20 (“MTD”), ECF No. 57). The Court addresses each argument in turn.

#### 21 **A. Statute of Limitations**

22 HOA first argues that Plaintiff’s claims are time barred. (HOA’s MTD 5:1–8:2). Where  
23 a claim arises from the non-judicial foreclosure on real property, the statute of limitations  
24 begins to accrue at the time of the foreclosure sale. *See Deutsche Bank Nat’l Tr. Co. v. SFR*  
25 *Invs. Pool 1, LLC*, No. 2:17-cv-02638, 2018 WL 3758569, at \*2 (D. Nev. Aug. 8, 2017); *Bank*

1 of Am., N.A. v. Antelope Homeowners' Ass'n, No. 2:16-cv-00449-JCM-PAL, 2017 WL 421652,  
2 at \*3 (D. Nev. Jan. 30, 2017).

3 In Nevada, an action to quiet title is subject to the five-year limitations period set forth in  
4 NRS 11.070. See *U.S. Bank Nat'l Ass'n v. Southern Highlands Cmty. Ass'n*, No. 2:18-cv-  
5 00205-GMN-GWF, 2018 WL 3997265, at \*2 (D. Nev. Aug. 21, 2018); see also *Deutsche Bank*  
6 *Nat'l Tr. Co.*, 2018 WL 3758569, at \*2; *Bank of Am., N.A.*, 2017 WL 421652, at \*3; see also  
7 *Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110, 1114 (9th Cir. 2016) ("Under Nevada law,  
8 Spencer could have brought claims challenging the HOA foreclosure sale within five years of  
9 the sale.").

10 Here, Plaintiff's quiet title claim arises from the HOA foreclosure sale and, therefore, a  
11 five-year limitations period applies. Because the HOA foreclosure sale took place on April 17,  
12 2012, and Plaintiff filed its Complaint on April 15, 2016, Plaintiff's quiet title claim is timely.

### 13 **B. Constitutionality of the Foreclosure**

14 Next, HOA asserts that Plaintiff cannot prevail on the theory that the foreclosure was  
15 unconstitutional under the Fourteenth Amendment. (HOA's MTD 8:6–16:23). HOA further  
16 argues that Plaintiff's first cause of action, which invokes the Constitution's Takings Clause  
17 and the Eighth Amendment, are inapplicable because HOA is a private, non-profit actor.<sup>2</sup> (*Id.*  
18 8:7–12:24). Plaintiff responds that the Ninth Circuit's holding in *Bourne Valley Court Tr. v.*  
19 *Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016), *cert. denied*, No. 16-1208, 2017 WL

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25 <sup>2</sup> The Court agrees with HOA that Plaintiff's allegations with respect to the foreclosure constituting an  
unconstitutional taking and a violation of the Eighth Amendment are unsupported by federal law and Nevada  
law. (HOA's MTD 8:7–12:24). Plaintiff fails to put forth any opposition to this argument and indeed clarifies  
that its constitutional claim concerns the Ninth Circuit's holding in *Bourne Valley* and the Due Process Clause of  
the Fourteenth Amendment. (See Resp. 9:8–11:17, ECF No. 60).

1 1300223 (U.S. June 26, 2017), compels the Court to hold that the HOA foreclosure sale did not  
2 extinguish Plaintiff's DOT. (Resp. 9:8–11:17, ECF No. 60).<sup>3</sup>

3 In *Bourne Valley*, the Ninth Circuit held that NRS 116.3116's "'opt-in' notice scheme,  
4 which required a homeowners' association to alert a mortgage lender that it intended to  
5 foreclose only if the lender had affirmatively requested notice, facially violated the lender's  
6 constitutional due process rights under the Fourteenth Amendment to the Federal Constitution."  
7 *Bourne Valley*, 832 F.3d at 1156. Specifically, the Court of Appeals found that by enacting the  
8 statute, the Nevada legislature acted to adversely affect the property interests of mortgage  
9 lenders and was thus required to provide "notice reasonably calculated, under all  
10 circumstances, to apprise interested parties of the pendency of the action and afford them an  
11 opportunity to present their objections." *Id.* at 1159. The statute's opt-in notice provisions  
12 therefore violated the Fourteenth Amendment's Due Process Clause because they  
13 impermissibly "shifted the burden of ensuring adequate notice from the foreclosing  
14 homeowners' association to a mortgage lender." *Id.*

15 In holding that NRS 116.3116's opt-in notice scheme is facially unconstitutional, the  
16 Ninth Circuit rejected the appellant's argument that NRS 107.090 should be read into NRS  
17 116.3116(1) to cure the constitutional deficiency. *Id.* Specifically, the appellant argued that  
18 the "incorporation of section 107.090 means that foreclosing homeowners' associations were  
19 required to provide notice to mortgage lenders even absent a request." *Id.* The Ninth Circuit,  
20 interpreting Nevada law, held that this interpretation "would impermissibly render the express  
21 notice provisions of Chapter 116 entirely superfluous." *Id.*

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25 <sup>3</sup> In light of the Nevada Supreme Court's decision in *SFR Invs. Pool 1, LLC v. Bank of New York Mellon*, 422  
P.3d 1248 (Nev. 2018), the Court ordered the parties to file supplemental briefs addressing the interplay between  
that decision and *Bourne Valley*, (ECF No. 76). BDJ, HOA, and Plaintiff timely filed their respective briefs,  
(ECF Nos. 77, 78, 79).

1 Subsequent to *Bourne Valley*, a court in this District certified the following question to  
2 the Nevada Supreme Court: “Whether NRS § 116.31168(1)’s incorporation of NRS § 107.090  
3 required a homeowner’s association to provide notices of default and/or sale to persons or  
4 entities holding a subordinate interest even when such persons or entities did not request notice,  
5 prior to the amendment that took effect on October 1, 2015.” *Bank of New York Mellon v. Star*  
6 *Hill Homeowners Ass’n*, No. 2:16-cv-02561-RFB-PAL, 2017 WL 1439671, at \*5 (D. Nev. Apr.  
7 21, 2017). On August 2, 2018, the Nevada Supreme Court issued its decision on the certified  
8 question in *SFR Invs. Pool 1, LLC v. Bank of New York Mellon*, 422 P.3d 1248 (Nev. 2018).  
9 The Nevada Supreme Court explicitly “decline[d] to follow the majority holding in *Bourne*  
10 *Valley*, 832 F.3d at 1159,” and concluded that “NRS 116.31168 fully incorporated both the opt-  
11 in and mandatory notice provisions of NRS 107.090 . . . .” *Id.* at 1253. Therefore, “before the  
12 October 1, 2015, amendment to NRS 116.31168, the statute incorporated NRS 107.090’s  
13 requirement to provide foreclosure notices to all holders of subordinate interests, even when  
14 such persons or entities did not request notice.” *Id.*

15 “[A] State’s highest court is the final judicial arbiter of the meaning of state statutes.”  
16 *Gurley v. Rhoden*, 421 U.S. 200, 208 (1975); *see also Knapp v. Cardwell*, 667 F.2d 1253, 1260  
17 (9th Cir. 1982) (“State courts have the final authority to interpret and, where they see fit, to  
18 reinterpret that state’s legislation.”). Federal courts are bound by its respective circuit courts’  
19 interpretations of state law only “in the absence of any subsequent indication from the [state]  
20 courts that [the federal] interpretation was incorrect.” *Owen v. United States*, 713 F.2d 1461,  
21 1464 (9th Cir. 1983); *see also Togill v. Clarke*, 877 F.3d 547, 556–60 (4th Cir. 2017) (holding  
22 that the Fourth Circuit was bound by the Supreme Court of Virginia’s limiting construction of a  
23 statute that was previously found to be facially unconstitutional by a federal court). Such  
24 rulings may only be reexamined when the “reasoning or theory” of that authority is “clearly  
25 irreconcilable” with the reasoning or theory of intervening higher authority. *Rodriguez v. AT&T*

1 *Mobility Servs. LLC*, 728 F.3d 975, 979 (9th Cir. 2013) (quoting *Miller v. Gammie*, 335 F.3d  
2 889, 893 (9th Cir. 2003) (en banc)). In determining whether intervening higher authority is  
3 “clearly irreconcilable,” courts must “look at more than the surface conclusions of the  
4 competing authority.” *Id.* “Rather, the relevant court of last resort must have undercut the  
5 theory or reasoning underlying the prior circuit precedent in such a way that the cases are  
6 clearly irreconcilable.” *Id.* (quoting *Gammie*, 335 F.3d at 900).

7 Here, the Nevada Supreme Court’s interpretation of the NRS 116.31168 notice  
8 provisions is irreconcilable with the Ninth Circuit’s prior interpretation. The Ninth Circuit’s  
9 conclusion that NRS 116.3116 violated a lender’s due process rights was explicitly premised  
10 upon the Ninth Circuit’s interpretation of state law. Specifically, the Ninth Circuit concluded  
11 the notice provisions of NRS 107.090 are not incorporated into NRS 116.31168. However,  
12 because the Nevada Supreme Court has since rejected the Ninth Circuit’s interpretation by  
13 holding that the notice provisions of NRS 107.090 are incorporated into NRS 116.31168,  
14 *Bourne Valley* is no longer controlling authority with respect to § 116.3116’s notice provisions.

15 Accordingly, to the extent Plaintiff seeks to quiet title based upon the Ninth Circuit’s  
16 holding in *Bourne Valley*, the Court rejects this theory. Because Plaintiff’s first cause of action  
17 is explicitly premised upon the constitutionality of the foreclosure, the Court dismisses the first  
18 cause of action with prejudice.<sup>4</sup>

### 19 **C. Disclaimer of Interest**

20 HOA also seeks dismissal on the basis that it disclaims interest in the Property and,  
21 accordingly, Plaintiff cannot state a claim for quiet title against it. (MTD 17:25–20:7). Courts  
22 in this District have recognized, however, that “parties facing a quiet title claim may be, at least  
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24 <sup>4</sup> Plaintiff’s first claim is labeled as one for declaratory relief, which is a remedy rather than a stand-alone cause  
25 of action. *See, e.g., U.S. Bank, N.A., v. 9008 Medicine Wheel Tr.*, No. 2:18-cv-00092-GMN-NJK, 2018 WL  
4494090, at \*3 (D. Nev. Sept. 18, 2018); *Brannan v. Bank of Am.*, No. 2:16-cv-01004-GMN-GWF, 2018 WL  
1220562, at \*6 (D. Nev. Mar. 8, 2018). To the extent this cause of action is in substance one for quiet title, it is  
duplicative of Plaintiff’s second cause of action for quiet title.

1 nominally, necessary parties when the court’s potential invalidation of the foreclosure sale  
2 could alter their possible liability to other entities in the case.” *Bank of Am., N.A. v. Sunrise*  
3 *Ridge Master Homeowners Ass’n*, No. 2:16-cv-0381-JCM-VCF, 2017 WL 1293977, at \*4 (D.  
4 Nev Mar. 10, 2017). As this Court previously found, “[b]ecause the HOA would regain an  
5 interest in the Property if the Court declares the HOA sale to be invalid, the HOA is a necessary  
6 party” in such circumstances. *See SRMOF II 2012-1 v. SFR Invs. Pool I, LLC*, No. 2:15-cv-  
7 01677-GMN-CWH, 2016 WL 3606786, at \*2 (D. Nev. June 30, 2016) (noting that “[g]ranting  
8 Plaintiff’s request for relief in the HOA’s absence could impair or impede the HOA’s ability to  
9 protect its interests.”); *see also U.S. Bank, N.A. v. Ascente Homeowners Ass’n*, No. 2:15-cv-  
10 00302-JAD-VCF, 2015 WL 8780157, at \*2 (D. Nev. Dec. 15, 2015) (rejecting an HOA’s  
11 request for dismissal from a foreclosure case because the HOA was a necessary party due to the  
12 plaintiff’s challenge of the sale’s validity).

13 Here, Plaintiff requests two potential forms of relief with respect to its quiet title claim—  
14 a declaration that its DOT survived the foreclosure sale or, alternatively, a declaration that the  
15 foreclosure sale is void. (*See* Compl. 11:20–12:2). Should the Court invalidate the foreclosure  
16 sale, HOA may still have an interest in the Property. Accordingly, the Court declines to grant  
17 HOA’s Motion on this basis.

#### 18 **D. Equitable Grounds for Setting Aside the Foreclosure Sale**

19 HOA argues that Plaintiff’s quiet title claim should be dismissed because Plaintiff’s  
20 allegations of fraud, unfairness, or oppression are conclusory and without sufficient factual  
21 detail. (HOA’s MTD 21:3–14). HOA continues that Plaintiff’s assertions concerning the  
22 grossly inadequate sales price, without more, cannot justify setting aside the sale. (*Id.* 20:10–  
23 21:2).

24 The Nevada Supreme Court recently held that the commercial reasonableness standard  
25 of Uniform Commercial Code Article 9 does not apply in the context of HOA foreclosure sales

1 of real property. *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*,  
2 405 P.3d 641, 644 (Nev. 2017). The relevant inquiry, rather, is “whether the sale was affected  
3 by fraud, unfairness, or oppression.” *Id.* at 646. “[M]ere inadequacy of price is not in itself  
4 sufficient to set aside the foreclosure sale, but it should be considered together with any alleged  
5 irregularities in the sales process to determine whether the sale was affected by fraud,  
6 unfairness, or oppression.” *Id.* at 648. The burden of establishing that a foreclosure sale should  
7 be set aside rests with the party challenging the sale. *Id.* at 646.

8 In addition to a grossly inadequate sales price, Plaintiff argues unreasonableness is  
9 shown by: HOA’s violation of its mortgage protection clause in its CC&Rs; the notice of sale’s  
10 failure to identify the proper statute or the superpriority lien amount; and the inclusion of  
11 improper fees and costs in the amounts owed as stated in the foreclosure notices. (Pl.’s Resp.  
12 13:7–15:21).

### 13 **i. Mortgage Protection Clause**

14 With respect to Plaintiff’s allegation that HOA violated its mortgage protection clause,  
15 the Nevada Supreme Court has explicitly held that such clauses do not supersede the statutory  
16 structure of NRS 116. *SFR Invs. Pool 1 v. U.S. Bank*, 334 P.3d 408, 418–19 (Nev. 2014). “[A]  
17 mortgage protection clause purporting to subordinate a HOA lien to the first deed of trust does  
18 not, without more, constitute unfairness in the context of a HOA foreclosure.” *U.S. Bank, N.A.*  
19 *v. SFR Invs. Pool 1, LLC*, No. 2:15-cv-1527-JCM-CWH, 2018 WL 3312980, at \*9 (D. Nev.  
20 July 5, 2018). Accordingly, insofar as Plaintiff premises its claims on HOA’s violation of the  
21 mortgage protection clause, HOA cannot be held liable on this theory.

### 22 **ii. Content of the Notices**

23 Next, Plaintiff argues that the content of HOA’s notices are deficient because they did  
24 not specify the superpriority amount owed, failed to cite the relevant statutory provision, and  
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1 impermissibly included collection costs and fees. (Resp. 15:10–17). None of these omissions,  
2 however, are sufficient to establish fraud, unfairness, or oppression.

3 Specifically, the Nevada Supreme Court has expressly rejected the argument that the  
4 inclusion of fees and costs is evidence, in and of itself, of fraud, unfairness, or oppression. *See*  
5 *S. Capital Pres., LLC v. GSAA Equity Tr.* 2006-5, No. 72461, 414 P.3d 808 (Nev. 2018)  
6 (unpublished) (“[A]lthough counsel argued that the notices’ inclusion of improperly incurred  
7 fees was unfair, there was no actual evidence supporting how inclusion of those fees either  
8 misled respondent or otherwise brought about the low sales price.”); *see also U.S. Bank Nat’l*  
9 *Ass’n v. Saticoy Bay LLC*, No. 2:17-cv-00463-APG-GWF, 2018 WL 3231245, at \*3 (D. Nev.  
10 July 2, 2018) (noting that while the “superpriority portion of the HOA’s lien for assessment  
11 does not include collection fees and foreclosure costs.... [Plaintiff] has not plausibly alleged  
12 how the inclusion of these costs in the overall lien amount was so unfair that it would justify  
13 setting aside the sale.”).

14 With respect to HOA’s failure to include the superpriority component of the HOA lien,  
15 this too, is not enough to justify setting aside the sale on the grounds of unfairness. As another  
16 court in this District recognized, “[t]he fact that a notice does not identify a superpriority  
17 amount is of no consequence because Chapter 116 gives lienholders notice that the HOA may  
18 have a superpriority interest that could extinguish their security interests.” *Bank of Am., N.A. v.*  
19 *Saticoy Bay LLC Series*, No. 2:17-cv-02808-APG-CWH, 2018 WL 3312969, at \*3 (D. Nev.  
20 July 5, 2018). The Nevada Supreme Court has also rejected the argument that foreclosure  
21 notices must always state the superpriority portion, reasoning, in part, that “[t]he notices went  
22 to the homeowner and other junior lienholders, not just [the first deed of trust holder], so it was  
23 appropriate to state the total amount of the lien.” *SFR Invs. Pool 1 v. U.S. Bank*, 334 P.3d 408,  
24 418 (Nev. 2014) (en banc).

1           Lastly, Plaintiff alleges that the notice was improper because it states “HOA may be  
2   foreclosing under either NRS Chapter 117 or NRS Chapter 116,” and that the “confusing  
3   foreclosure notices caused bidding to be chilled” at the auction. (Compl. ¶ 23). However,  
4   Plaintiff fails to explain how HOA’s citation to two statutes—including the correct one—  
5   caused such confusion as to chill bidding at the sale. Plaintiff cites no authority to support this  
6   proposition and the Court nonetheless finds that the notice’s reference to the proper statute was  
7   sufficient to make Plaintiff and other potential bidders aware that the sale was being conducted  
8   under Chapter 116.

#### 9           **E. Uniform Fraudulent Transfer Act**

10          Nevada’s Uniform Fraudulent Transfer Act was “designed to prevent a debtor from  
11   defrauding creditors by placing the subject property beyond the creditors’ reach.” *Herup v.*  
12   *First Boston Fin., LLC*, 162 P.3d 870, 872 (Nev. 2007). “The act makes it a fraud for a debtor  
13   to transfer or incur obligations on property with the intention of avoiding paying a debt to a  
14   creditor.” *Agha-Khan v. Bank of New York Mellon*, No. 2:16-cv-02651-RFB-PAL, 2018 WL  
15   1566327, at \*4 (D. Nev. Mar. 30, 2018) (citing N.R.S. §§ 112.180, 112.190).

16          As this statute applies to disputes between creditors and debtors, this cause of action is  
17   inapplicable to the instant case. *See id.* Plaintiff neither alleges, nor argues, that HOA or BDJ  
18   have a creditor-debtor relationship with Plaintiff. Nor does Plaintiff allege that Borrower, as  
19   Plaintiff’s debtor, initiated the foreclosure. On the contrary, the crux of Plaintiff’s Complaint  
20   assigns impropriety to HOA and BDJ rather than Borrower, who is not a party to this action. In  
21   short, this cause of action is misplaced and the Court, therefore, dismisses this claim with  
22   prejudice.

23          Based on the foregoing, the Court finds that Plaintiff has failed to plausibly allege facts  
24   to show it is entitled to relief with respect to its claims. The Court, therefore, grants HOA’s  
25   Motion and dismisses Plaintiff’s Complaint.

1 **IV. LEAVE TO AMEND**

2 Rule 15(a)(2) of the Federal Rules of Civil Procedure permits courts to “freely give  
3 leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Ninth Circuit  
4 has “repeatedly held that ‘a district court should grant leave to amend even if no request to  
5 amend the pleading was made, unless it determines that the pleading could not possibly be  
6 cured by the allegation of other facts.’” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.  
7 2000) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)).

8 With respect to Plaintiff’s second and third cause of action for quiet title and declaratory  
9 relief, respectively, the Court finds that Plaintiff may be able to allege sufficient facts to  
10 plausibly establish an entitlement to relief. The Court, therefore, will permit Plaintiff to file an  
11 amended complaint if Plaintiff is able to cure the deficiencies discussed herein. Should  
12 Plaintiff elect to file an amended complaint, Plaintiff shall do so with fourteen (14) days of this  
13 Order. Failure to do so will result in the Court dismissing Plaintiff’s claims with prejudice.

14 **V. CONCLUSION**

15 **IT IS HEREBY ORDERED** that HOA’s Motion to Dismiss, (ECF No. 57), is  
16 **GRANTED.**

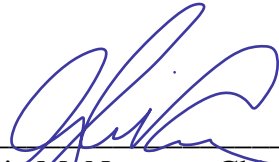
17 **IT IS FURTHER ORDERED** that Plaintiff’s second and third causes of action for  
18 quiet title and declaratory relief are **DISMISSED without prejudice**. Plaintiff’s first cause of  
19 action for declaratory relief and fourth cause of action for fraudulent transfer under NRS  
20 112.190 are **DISMISSED with prejudice**.

21 **IT IS FURTHER ORDERED** that Plaintiff’s amended complaint, should Plaintiff elect  
22 to file one, must be filed within fourteen (14) days of this Order. Failure to do so will result in  
23 the Court dismissing Plaintiff’s causes of action with prejudice.  
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1           **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment, (ECF  
2 No. 68), is **DENIED as moot** with leave to refile pending the disposition of Plaintiff' amended  
3 complaint should Plaintiff elect to file one.

4           **IT IS FURTHER ORDERED** that BDJ's Motion to Stay, (ECF No. 70), is **DENIED**  
5 **as moot.**

6           **DATED** this 29 day of September, 2018.

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10 Gloria M. Navarro, Chief Judge  
11 United States District Judge  
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